

The Hon. Gabriel W. Gorenstein
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

January 9, 2025
via ECF

Re: *Cohen v. Action Network, et al.*, No. 23-cv-10359-JAV-GWG

Letter in Response to Plaintiff's Proposed Third Amended Complaint

Dear Judge Gorenstein:

Defendants Civitech, Democratic National Committee (DNC), Netroots Nation, and Nathan Woodhull respectfully submit this joint letter per this Court's December 11, 2024 Order, Doc. 73, to address Plaintiff's proposed Third Amended Complaint (TAC), Doc. 77 Ex. 1.

On November 22, 2024, Defendants in this case filed letters requesting a pre-motion conference in anticipation of forthcoming motions to dismiss. *See* Docs. 60-66. This Court provided an opportunity for the Plaintiff, Mr. Cohen, to submit a TAC by December 24, 2024 that accounted for the arguments previewed in Defendants' letters. Doc. 73. On December 24, Mr. Cohen requested and received an extension until December 27, 2024 to submit his TAC. Docs. 75, 76. Despite receiving the requested extension, Mr. Cohen nevertheless submitted his proposed TAC late, on December 28, 2024, without any explanation for its lateness. Doc. 77.

Despite repeated warnings from this Court, the proposed TAC remains sprawling, incoherent, and far from the "short and plain statement" envisioned by Rule 8 of the Federal Rules of Civil Procedure. It is 815 numbered paragraphs long,¹ with many paragraphs that include lengthy unnumbered bulleted lists. *See, e.g.*, Doc. 77 Ex. 1 at ¶ 162. If anything, the TAC has become less concise and more of "a labyrinthian prolixity of unrelated and vituperative charges." Doc. 25 (quoting *Prezzi v. Schelter*, 469 F.2d 691, 692 (2d Cir. 1972)); *see, e.g.*, Doc. 77 Ex. 1 at ¶ 36 (alleging that Defendants "recruited funders within the Gay Rights Movement to ensure Plaintiff could not escape their extortion and women to use as proxies in their efforts to coerce and defraud him"). Mr. Cohen has been on notice since at least this Court's July 2, 2024 Order To Show Cause, Doc. 25, that his pleadings risk violating Rule 8, and has been provided repeated opportunities to address any deficiencies. A plaintiff's "repeated failure to cure deficiencies by amendments previously allowed" is a sufficient basis to deny leave to amend. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also BankUnited, N.A. v. Merritt Env't Consulting Corp.*, 360 F. Supp. 3d 172, 191 (S.D.N.Y. 2018).

¹ The TAC is actually ten paragraphs longer than the Second Amended Complaint (SAC), although the overall document is nine pages shorter (four pages not including the SAC's endnotes). *Cf.* Doc. 73 at 2 ("[T]he Court will likely reject any Third Amended Complaint that is longer than the SAC.").

The undersigned Defendants believe that, at this juncture, the Court should exercise the right it reserved in its prior order, *see* Doc. 73 (as amended by Doc. 74), and issue an Order for Plaintiff to Show Cause why the TAC and the case should not be dismissed, with prejudice, for Plaintiff's repeated failures to abide by Rule 8. We respectfully request the Court issue such an order, or, in the alternative, request permission to include arguments pertaining to Rule 8 in the motions to dismiss previewed by our letters dated November 22, 2024, Docs. 62, 64-66.

Respectfully submitted,

/s/ Mimi Marziani

Mimi Marziani, Esq.
MARZIANI, STEVENS & GONZALEZ PLLC
1533 Austin Highway, Suite 102-402
San Antonio, TX 78218
Phone: (210) 343-5604
Email: mmarziani@msgpllc.com
Counsel for Defendant Civitech

/s/ Seth K. Kugler

Seth K. Kugler, Esq.
Grellas Shah LLP
20400 Stevens Creek Blvd, Suite 280
Cupertino, CA 95014
Phone: (408) 255-6310
Email: skugler@grellas.com
Counsel for Defendant Nathan Woodhull

/s/ Nathaniel K. Charny

Nathaniel K. Charny, Esq.
CHARNY & WHEELER P.C.
42 West Market Street
Rhinebeck, New York 12572
Phone: (845) 876-7500
Email: ncharny@charnywheeler.com
Counsel for Defendant Netroots Nation

/s/ Joshua Matz

Joshua Matz, Esq.
HECKER FINK LLP
1050 K Street, NW, Suite 1040
Washington, DC 20001
Phone: (212) 763-0883
Email: jmatz@heckerfink.com
*Counsel for Defendant
Democratic National Committee*